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BOSTON SCIENTIFIC CORPORATION

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ERIC WILLIAMS,

Plaintiff,

vs.

BOSTON SCIENTIFIC CORPORATION,  
JAMES TOBIN, WILLIAM R. ROSKOPF,  
JENNIFER A. HEGNER AND THOMAS J.  
O'CONNELL, JR.

Defendants.

Case No. 3:08-CV-01437-WHA

**DEFENDANT BOSTON SCIENTIFIC  
CORPORATION'S ANSWER TO  
COMPLAINT**

Defendant BOSTON SCIENTIFIC CORPORATION ("Defendant" or "BSC") for itself alone, and in answer to Plaintiff's Complaint, admits, denies and alleges as follows:

**I. INTRODUCTION**

1. In answer to the allegations of Paragraph 1 of the Complaint, Defendant admits that Plaintiff has filed the Complaint, which Complaint speaks for itself. Except as expressly admitted herein, Defendant denies the allegations of Paragraph 1 and specifically denies that James Tobin, William Roskopf, Jennifer Hegner and Tom O'Connell are Defendants in the

1 Complaint; by Order dated May 13, 2008, said individuals have been dismissed.

2 2. In answer to the allegations of Paragraph 2 of the Complaint, Defendant avers that  
3 Williams and BSC discussed possible errors in the approval process related to promotional  
4 materials, sales support materials and training materials (hereinafter "PSST") process. Except as  
5 expressly admitted herein, Defendant states that it lacks information sufficient to enable it to form  
6 a belief as to the truth of the allegations in Paragraph 2 and, placing its denial on that ground,  
7 denies the allegations set forth therein.

8 3. In answer to the allegations of Paragraph 3 of the Complaint, Defendant denies  
9 each and every allegation set forth therein.

10 4. In answer to the allegations of Paragraph 4 of the Complaint, Defendant denies  
11 each and every allegation set forth therein.

12 5. In answer to the allegations of Paragraph 5 of the Complaint, Defendant denies  
13 each and every allegation set forth therein.

14 6. In answer to the allegations of Paragraph 6 of the Complaint, Defendant denies  
15 each and every allegation set forth therein.

16 7. In answer to the allegations of Paragraph 7 of the Complaint, Defendant denies  
17 each and every allegation set forth therein.

18 8. In answer to the allegations of Paragraph 8 of the Complaint, Defendant denies  
19 each and every allegation set forth therein.

20 **II. Parties**

21 9. In answer to the allegations of Paragraph 9 of the Complaint, Defendant states that  
22 it lacks information sufficient to enable it to form a belief as to the truth of said allegations and,  
23 placing its denial on that ground, denies the allegations set forth therein.

24 10. In answer to the allegations of Paragraph 10 of the Complaint, Defendant admits  
25 that Plaintiff worked as the Manager of Marketing Communications of its Neurovascular Division  
26 from December 1999 until November 2007. Except as expressly admitted herein, Defendant  
27 denies the allegations set forth in Paragraph 10.

28 11. In answer to the allegations of Paragraph 11 of the Complaint, Defendant admits

1 that Boston Scientific is a corporation headquartered in Natick, Massachusetts, and that BSC's  
2 neurovascular division is, and at all times mentioned herein, was located in Alameda County in  
3 the State of California. Except as expressly admitted herein, Defendant states that it lacks  
4 information sufficient to enable it to form a belief as to the truth of the allegations in Paragraph  
5 11 and, placing its denial on that ground, denies the allegations set forth therein.

6 12. Defendant admits the allegations of Paragraph 12 of the Complaint.

7 13. Defendant admits the allegations of Paragraph 13 of the Complaint.

8 14. In answer to the allegations of Paragraph 14, Defendant admits that Tobin is  
9 presently the President and Chief Executive Officer of BSC. Except as expressly admitted herein,  
10 Defendant denies the allegations set forth in Paragraph 14.

11 15. Defendant admits that Roskopf is currently a resident of Alameda County. Except  
12 as expressly admitted herein, Defendant lacks information sufficient to enable it to form a belief  
13 as to the truth of said allegations and, placing its denial on that ground, denies the allegations set  
14 forth in Paragraph 15.

15 16. In answer to the allegations of Paragraph 16, Defendant admits that Roskopf is  
16 presently a manger of BSC. Except as expressly admitted herein, Defendant denies the  
17 allegations set forth in Paragraph 16 of the Complaint.

18 17. Defendant admits that Hegner is currently a resident of Santa Clara County.  
19 Except as expressly admitted herein, Defendant lacks information sufficient to enable it to form a  
20 belief as to the truth of said allegations and, placing its denial on that ground, denies the  
21 allegations set forth in Paragraph 17.

22 18. In answer to the allegations of Paragraph 18, Defendant admits that Hegner is  
23 presently a manager of BSC. Except as expressly admitted herein, Defendant denies the  
24 allegations set forth in Paragraph 18.

25 19. Defendant admits that O'Connell is currently a resident of Santa Clara County.  
26 Except as expressly admitted herein, Defendant lacks information sufficient to enable it to form a  
27 belief as to the truth of said allegations and, placing its denial on that ground, denies the  
28 allegations set forth in Paragraph 19.

20. In answer to the allegations of Paragraph 20, Defendant admits that O'Connell is presently a manager of BSC. Except as expressly admitted herein, Defendant denies the allegations set forth in Paragraph 20.

21. In answer to the allegations of Paragraph 21 of the Complaint, Defendant states that it lacks information sufficient to enable it to form a belief as to the truth of said allegations and, placing its denial on that ground, denies the allegations set forth therein.

22. In answer to the allegations of Paragraph 22 of the Complaint, Defendant states that these allegations call for a legal conclusion as to which no answer by Defendant is required. Except as expressly admitted herein, Defendant lacks information sufficient to enable it to form a belief as to the truth of said allegations and, placing its denial on that ground, denies the allegations set forth therein.

### **III. VENUE**

23. In answer to the allegations of Paragraph 23 of the Complaint, Defendant admits that it is subject to the jurisdiction of this Court. Except as expressly admitted herein, Defendant denies the allegations set forth in Paragraph 23.

24. In answer to the allegations of Paragraph 24 of the Complaint, Defendant denies the allegations set forth therein.

25. In answer to the allegations of Paragraph 25 of the Complaint, Defendant admits that Roskopf is a resident of the State of California and subject to this Court's jurisdiction. Except as expressly admitted herein, Defendant denies the allegations set forth in Paragraph 25.

26. In answer to the allegations of Paragraph 26 of the Complaint, Defendant admits that Hegner is a resident of the State of California and subject to this Court's jurisdiction. Except as expressly admitted herein, Defendant denies the allegations set forth in Paragraph 26.

27. In answer to the allegations of Paragraph 27 of the Complaint, Defendant admits that O'Connell is a resident of the State of California and subject to this Court's jurisdiction. Except as expressly admitted herein, Defendant denies the allegations set forth in Paragraph 27.

28. In answer to the allegations of Paragraph 28 of the Complaint, Defendant admits that venue is proper. Except as expressly admitted herein, Defendant denies the allegations set

forth in Paragraph 28.

## V. FACTS

29. In answer to the allegations of Paragraph 29 of the Complaint, Defendant incorporates herein by reference its answers to each and every allegation contained in Paragraphs 1 through 28, inclusive, as though fully set forth herein.

30. In answer to the allegations in Paragraph 30 of the Complaint, Defendant admits that Plaintiff worked as the Manager of Marketing Communications of its Neurovascular Division from December 1999 until November 2007. Except as expressly admitted herein, Defendant denies the allegations set forth in Paragraph 30.

31. In answer to the allegations of Paragraph 31 of the Complaint, Defendant denies the allegations set forth therein.

32. In answer to the allegations of Paragraph 32 of the Complaint, Defendant admits that certain of its operations are regulated by the FDCA and regulations duly promulgated thereunder. Defendant states that the provisions of the FDCA and any applicable regulations promulgated thereunder, speak for themselves. Except as expressly admitted herein, Defendant denies the allegations set forth in Paragraph 32.

33. In answer to the allegations of Paragraph 33 of the Complaint, Defendant states that these allegations call for a legal conclusion as to which no answer by Defendant is required. Except as expressly admitted herein, Defendant lacks information sufficient to enable it to form a belief as to the truth of said allegations and, placing its denial on that ground, denies the allegations set forth therein.

34. In answer to the allegations of Paragraph 34, Defendant admits that it has established and maintains a Code of Conduct and other codes, policies, and procedures, which documents speak for themselves. Except as expressly admitted herein, Defendant lacks information sufficient to form a belief as to the truth of the allegations in Paragraph 34, and, placing its denial on that ground, denies the allegations set forth therein.

35. In answer to the allegations of Paragraph 35 of the Complaint, Defendant admits that it has established a Code of Conduct and other codes, policies, and procedures, which codes

1 speak for themselves. Except as expressly admitted herein, Defendant denies the allegations set  
2 forth in Paragraph 35.

3 36. In answer to the allegations in Paragraph 36 of the Complaint, Defendant admits  
4 that beginning in August 2005, Plaintiff discussed with BSC management possible errors in  
5 BSC's PSST processes. Except as expressly admitted herein, Defendant denies the allegations set  
6 forth in Paragraph 36.

7 37. a. In answer to the allegations in Paragraph 37(a) of the Complaint,  
8 Defendant admits that on or about August 21, 2005, Plaintiff discussed possible errors in the  
9 PSST process with respect to certain of BSC's training and sales materials with BSC  
10 management. Except as expressly admitted herein, Defendant denies the allegations set forth in  
11 Paragraph 37(a).

12 b. In answer to the allegations in Paragraph 37(b) of the Complaint,  
13 Defendant admits that in or about October 2005, Plaintiff sent an email to Lynn Mattice, BSC's  
14 Vice President of Corporate Security, regarding possible PSST process errors. Except as  
15 expressly admitted herein, Defendant denies the allegations set forth in Paragraph 37(b).

16 c. In answer to the allegations in Paragraph 37(c) of the Complaint,  
17 Defendant admits that in or about January 2006, Plaintiff discussed possible errors in the PSST  
18 process with respect to certain of BSC's training and sales materials with BSC management.  
19 Except as expressly admitted herein, Defendant denies the allegations set forth in Paragraph  
20 37(c).

21 d. In answer to the allegations in Paragraph 37(d) of the Complaint,  
22 Defendant states that it lacks information sufficient to enable it to form a belief as to the truth of  
23 said allegations and, placing its denial on that ground, denies the allegations set forth therein.

24 e. In answer to the allegations in Paragraph 37(e) of the Complaint,  
25 Defendant states that it lacks information sufficient to enable it to form a belief as to the truth of  
26 said allegations and, placing its denial on that ground, denies the allegations set forth therein.

27 f. In answer to the allegations in Paragraph 37(f) of the Complaint, Defendant  
28 states that it lacks information sufficient to enable it to form a belief as to the truth of said

1 allegations and, placing its denial on that ground, denies the allegations set forth therein.

2 g. In answer to the allegations in Paragraph 37(g) of the Complaint,  
3 Defendant admits that on or about October 2006 Plaintiff sent emails to Jim Gilbert and Jim  
4 Tobin regarding the PSST process. Except as expressly admitted herein, Defendant denies the  
5 allegations set forth in Paragraph 37(g).

6 h. In answer to the allegations in Paragraph 37(h) of the Complaint,  
7 Defendant states that it lacks information sufficient to enable it to form a belief as to the truth of  
8 said allegations and, placing its denial on that ground, denies the allegations set forth therein.

9 i. In answer to the allegations in Paragraph 37(i) of the Complaint, Defendant  
10 admits that on or about April 2, 2007, Plaintiff sent emails to BSC management, discussing  
11 possible errors in the PSST process with respect to certain of BSC's training and sales materials.  
12 Except as expressly admitted herein, Defendant denies the allegations set forth in Paragraph 37(i).

13 j. In answer to the allegations in Paragraph 37(j) of the Complaint, Defendant  
14 admits that on or about April 4, 2007, Plaintiff met with Milt McColl and Steve Hanlon and  
15 discussed possible errors in the PSST process with respect to certain of BSC's training and sales  
16 materials. Except as expressly admitted herein, Defendant states that it lacks information  
17 sufficient to enable it to form a belief as to the truth of said allegations and, placing its denial on  
18 that ground, denies the allegations set forth therein.

19 k. In answer to the allegations in Paragraph 37(k) of the Complaint,  
20 Defendant admits that on or about May 7, 2007, during a "Brain Training" meeting conducted in  
21 Fremont, California, Plaintiff discussed possible errors in the PSST process with respect to certain  
22 of BSC's training and sales materials. Except as expressly admitted herein, Defendant denies the  
23 allegations set forth in Paragraph 37(k).

24 l. In answer to the allegations in Paragraph 37(l) of the Complaint, Defendant  
25 admits that in or about October 2007, Plaintiff discussed possible errors in the PSST process with  
26 respect to certain of BSC's training and sales materials used at BSC's October 2007 "Brain  
27 Training" meeting. Except as expressly admitted herein, Defendant denies the allegations set  
28 forth in Paragraph 37(l).



1           38. In answer to the allegations of Paragraph 38 of the Complaint, Defendant denies  
2 the allegations set forth therein.

3           39. In answer to the allegations of Paragraph 39 of the Complaint, Defendant denies  
4 the allegations set forth therein.

5           40. In answer to the allegations in Paragraph 40 of the Complaint, Defendant admits  
6 that on or about January 25, 2006, BSC received correspondence from the FDA, which  
7 correspondence was publicly disclosed. Except as expressly admitted herein, Defendant denies  
8 the allegations set forth in Paragraph 40.

9           41. In answer to the allegations in Paragraph 41 of the Complaint, Defendant admits  
10 that on March 31, 2007, BSC filed its 10K document with the SEC, which document speaks for  
11 itself. Except as expressly admitted herein, Defendant denies the allegations set forth in  
12 Paragraph 41.

13           42. In answer to the allegations of Paragraph 42 of the Complaint, Defendant denies  
14 the allegations set forth therein.

15           43. In answer to the allegations of Paragraph 43 of the Complaint, Defendant admits  
16 that it undertook certain actions in response to correspondence it received from the FDA. Except  
17 as expressly admitted herein, Defendant denies the allegations set forth in Paragraph 43.

18           44. In answer to the allegations in Paragraph 44 of the Complaint, Defendant admits  
19 that it requested Plaintiff's participation in an internal investigation related to possible errors in  
20 the PSST process, but which was *unrelated* to the Warning Letter, and that Plaintiff complied  
21 with Defendant's request. Except as expressly admitted herein, Defendant denies the allegations  
22 set forth in Paragraph 44.

23           45. a. In answer to the allegations in Paragraph 45 (a) of the Complaint,  
24 Defendant admits that Plaintiff met with Stephen Lawrence, of the Hogan and Hartson Firm.  
25 Except as expressly admitted herein, Defendant denies the allegations set forth in Paragraph 45  
26 (a).

27           b. In answer to the allegations in Paragraph 45 (b) of the Complaint,  
28 Defendant admits that on or about November 29, 2006 Plaintiff met with Stephen Lawrence, Paul



1 Skelly and Jeffrey Shapiro of the Hogan and Hartson Firm. Except as expressly admitted herein,  
2 Defendant denies the allegations set forth in Paragraph 45 (b).

3 46. In answer to the allegations of Paragraph 46 of the Complaint, Defendant denies  
4 the allegations set forth therein.

5 47. In answer to the allegations in Paragraph 47 of the Complaint, Defendant admits  
6 that in or about June 2007, Roskopf announced the opening of the position of Director, Events  
7 and Communications Programs. Except as expressly admitted herein, Defendant denies the  
8 allegations set forth in Paragraph 47.

9 48. In answer to the allegations in Paragraph 48 of the Complaint, Defendant admits  
10 that Williams reported to Roskopf for a period of time, and that had he been selected, this would  
11 have been a promotion for Williams. Except as expressly admitted herein, Defendant denies each  
12 and every allegation set forth Paragraph 48.

13 49. In answer to the allegations in Paragraph 49 of the Complaint, Defendant admits  
14 that Plaintiff was interviewed for the position of Director, Events and Communications Programs.  
15 Except as expressly admitted herein, Defendant denies the allegations set forth in Paragraph 49.

16 50. In answer to the allegations in Paragraph 50 of the Complaint, Defendant admits  
17 that Hegner was promoted to Director, Events and Communications Programs and that Hegner  
18 was Plaintiff's direct supervisor for a period of time. Except as expressly admitted herein,  
19 Defendant denies the allegations set forth in Paragraph 50.

20 51. In answer to the allegations in Paragraph 51 of the Complaint, Defendant denies  
21 the allegations set forth therein.

22 52. In answer to the allegations in Paragraph 52 of the Complaint, Defendant admits  
23 the allegations set forth therein.

24 53. In answer to the allegations in Paragraph 53 of the Complaint, Defendant admits  
25 that Plaintiff was terminated in a reduction in force on or about November 9, 2007. Except as  
26 expressly admitted herein, Defendant denies the allegations set forth in Paragraph 53.

27 54. In answer to the allegations in Paragraph 54 of the Complaint, Defendant denies  
28 the allegations set forth therein.

1           55. In answer to the allegations in Paragraph 55 of the Complaint, Defendant denies  
2 the allegations set forth therein.

3           56. In answer to the allegations in Paragraph 56 of the Complaint, Defendant denies  
4 the allegations set forth therein.

5           57. In answer to the allegations in Paragraph 57 of the Complaint, Defendant denies  
6 the allegations set forth therein.

7           58. In answer to the allegations in Paragraph 58 of the Complaint, Defendant denies  
8 the allegations set forth therein.

9           59. In answer to the allegations in Paragraph 59 of the Complaint, Defendant denies  
10 the allegations set forth therein.

11          60. In answer to the allegations in Paragraph 60 of the Complaint, Defendant denies  
12 the allegations set forth therein.

13          61. In answer to the allegations in Paragraph 61 of the Complaint, Defendant states  
14 that Section 806(a)(1) and (2) of SOX, 18 U.S.C. § 1514A(a)(1) and (2) speak for themselves.  
15 Except as expressly admitted herein, Defendant denies the allegations set forth in Paragraph 61.

16          62. In answer to the allegations in Paragraph 62 of the Complaint, Defendant states  
17 that Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), Exchange Act Rule 10b-5, and 17  
18 C.F.R. §240.10b-5 speak for themselves. Except as expressly admitted herein, Defendant denies  
19 the allegations set forth in Paragraph 62.

20          63. In answer to the allegations in Paragraph 63 of the Complaint, Defendant denies  
21 the allegations set forth therein.

22          64. In answer to the allegations in Paragraph 64 of the Complaint, Defendant denies  
23 the allegations set forth therein.

24          65. In answer to the allegations in Paragraph 65 of the Complaint, Defendant denies  
25 the allegations set forth therein.

26          66. In answer to the allegations in Paragraph 66 of the Complaint, Defendant states  
27 that the Food and Drug and Cosmetic Act speaks for itself. Except as expressly admitted herein,  
28 Defendant denies the allegations set forth in Paragraph 66.

67. In answer to the allegations in Paragraph 67 of the Complaint, Defendant denies the allegations set forth therein.

68. In answer to the allegations in Paragraph 68 of the Complaint, Defendant states that Section 806(a)(1) and (2) of SOX, 18 U.S.C. § 1514A(a)(1) and (2) speak for themselves. Except as expressly admitted herein, Defendant denies the allegations set forth in Paragraph 68.

69. In answer to the allegations in Paragraph 69 of the Complaint, Defendant denies the allegations set forth therein.

70. In answer to the allegations in Paragraph 70 of the Complaint, Defendant denies the allegations set forth therein.

71. In answer to the allegations in Paragraph 71 of the Complaint, Defendant states that Section 10.3 of BSC's Code of Business Conduct and other codes, policies, and procedures, which speaks for itself. Except as expressly admitted herein, Defendant denies the allegations set forth in Paragraph 71.

72. In answer to the allegations in Paragraph 72 of the Complaint, Defendant states that BSC's Code of Conduct and other similar codes and policies speak for themselves. Except as expressly admitted herein, Defendant denies the allegations set forth in Paragraph 72.

73. In answer to the allegations in Paragraph 73 of the Complaint, Defendant states that BSC's Code of Conduct speaks for itself. Except as expressly admitted herein, Defendant denies the allegations set forth in Paragraph 73.

74. In answer to the allegations in Paragraph 74 of the Complaint, Defendant admits that Plaintiff acknowledged receipt of the Code of Conduct, which document speaks for itself. Except as expressly admitted herein, Defendant denies the allegations set forth in Paragraph 74.

75. In answer to the allegations in Paragraph 75 of the Complaint, Defendant denies the allegations set forth therein.

76. In answer to the allegations in Paragraph 76 of the Complaint, Defendant denies the allegations set forth therein.

## **VI. FIRST CAUSE OF ACTION**

### **(Wrongful Termination in Violation of Public Policy)**

1           77. In answer to the allegations of Paragraph 77 of the Complaint, Defendant  
2 incorporates herein by reference its answers to each and every allegation contained in Paragraphs  
3 1 through 76, inclusive, as though fully set forth herein.

4           78. In answer to the allegations of Paragraph 78 of the Complaint, Defendant states  
5 that the Federal Food, Drug and Cosmetic Act, and 21 U.S.C. §§331, 351(a)(2)(B); 21 C.F.R. §§  
6 210, 211 and 212 speak for themselves. Except as expressly admitted herein, Defendant denies  
7 the allegations set forth in Paragraph 78.

8           79. In answer to the allegations of Paragraph 79 of the Complaint, Defendant states  
9 that Sections 110390, 110398 and 111295 of the California Health and Safety Code speak for  
10 themselves. Except as expressly admitted herein, Defendant denies the allegations set forth in  
11 Paragraph 79.

12           80. In answer to the allegations of Paragraph 80 of the Complaint, Defendant states  
13 that Section 1102.5 of the California Labor Code speaks for itself. Except as expressly admitted  
14 herein, Defendant denies the allegations set forth in Paragraph 80.

15           81. In answer to the allegations of Paragraph 81 of the Complaint, Defendant states  
16 that the common law of the State of California and Section 1102.5 of the California Labor Code  
17 speak for themselves. Except as expressly admitted herein, Defendant denies the allegations set  
18 forth in Paragraph 81.

19           82. In answer to the allegations of Paragraph 82 of the Complaint, Defendant states  
20 that Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), Exchange Act Rule 10b-5, and 17  
21 C.F.R. §240.10b-5 speak for themselves. Except as expressly admitted herein, Defendant denies  
22 the allegations set forth in Paragraph 82.

23           83. In answer to the allegations of Paragraph 83 of the Complaint, Defendant states  
24 that Section 13 of the Securities and Exchange Act of 1933 speaks for itself. Except as expressly  
25 admitted herein, Defendant denies the allegations set forth in Paragraph 82.

26           84. In answer to the allegations of Paragraph 84 of the Complaint, Defendant states  
27 that Section 806(a)(1) and (2) of SOX, 18 U.S.C. § 1514A(a)(1) and (2) speak for themselves.  
28 Except as expressly admitted herein, Defendant denies the allegations set forth in Paragraph 84.

1           85. In answer to the allegations of Paragraph 85 of the Complaint, Defendant states  
2 that the statutes and regulations referenced in Plaintiff's complaint speak for themselves. Except  
3 as expressly admitted herein, Defendant denies the allegations of Paragraph 85.

4           86. In answer to the allegations of Paragraph 86 of the Complaint, Defendant denies  
5 the allegations set forth therein.

6           87. In answer to the allegations of Paragraph 87 of the Complaint, Defendant denies  
7 the allegations set forth therein.

8           88. In answer to the allegations of Paragraph 88 of the Complaint, Defendant denies  
9 the allegations set forth therein.

10          89. In answer to the allegations of Paragraph 89 of the Complaint, Defendant denies  
11 the allegations set forth therein.

12          90. In answer to the allegations of Paragraph 90 of the Complaint, Defendant denies  
13 the allegations set forth therein.

14          91. In answer to the allegations of Paragraph 91 of the Complaint, Defendant denies  
15 the allegations set forth therein.

16          92. In answer to the allegations of Paragraph 92 of the Complaint, Defendant denies  
17 the allegations set forth therein.

18          93. In answer to the allegations of Paragraph 93 of the Complaint, Defendant denies  
19 the allegations set forth therein.

20          94. In answer to the allegations of Paragraph 94 of the Complaint, Defendant denies  
21 the allegations set forth therein.

22          95. In answer to the allegations of Paragraph 95 of the Complaint, Defendant denies  
23 the allegations set forth therein.

24          96. In answer to the allegations of Paragraph 96 of the Complaint, Defendant denies  
25 the allegations set forth therein.

26          97. In answer to the allegations of Paragraph 97 of the Complaint, Defendant denies  
27 the allegations set forth therein.

28          98. In answer to the allegations of Paragraph 98 of the Complaint, Defendant denies

1 the allegations set forth therein.

2 99. In answer to the allegations of Paragraph 99 of the Complaint, Defendant denies  
3 the allegations set forth therein.

4 100. In answer to the allegations of Paragraph 100 of the Complaint, Defendant denies  
5 the allegations set forth therein.

6 101. In answer to the allegations of Paragraph 101 of the Complaint, Defendant denies  
7 the allegations set forth therein and further specifically denies that Plaintiff is entitled to recovery  
8 of any damages whatsoever, including punitive damages, from Defendant.

9 **VI. SECOND CAUSE OF ACTION**

10 **(Breach of Implied-in-Fact Contract)**

11 102. In answer to the allegations of Paragraph 102 of the Complaint, Defendant  
12 incorporates herein by reference its answers to each and every allegation contained in Paragraphs  
13 1 through 101, inclusive, as though fully set forth herein.

14 103. In answer to the allegations of Paragraph 103 of the Complaint, Defendant denies  
15 the allegations set forth therein.

16 104. In answer to the allegations of Paragraph 104 of the Complaint, Defendant denies  
17 the allegations set forth therein.

18 105. In answer to the allegations of Paragraph 105 of the Complaint, Defendant denies  
19 the allegations set forth therein.

20 106. In answer to the allegations of Paragraph 106 of the Complaint, Defendant denies  
21 the allegations set forth therein.

22 107. In answer to the allegations of Paragraph 107 of the Complaint, Defendant denies  
23 the allegations set forth therein and further specifically denies that Plaintiff is entitled to recovery  
24 of any damages whatsoever from Defendant.

25 **VI. THIRD CAUSE OF ACTION**

26 **(Breach of Implied Covenant of Good Faith and Fair Dealing)**

27 108. In answer to the allegations of Paragraph 108 of the Complaint, Defendant  
28 incorporates herein by reference its answers to each and every allegation contained in Paragraphs

1 through 107, inclusive, as though fully set forth herein.

109. In answer to the allegations of Paragraph 109 of the Complaint, Defendant denies the allegations set forth therein.

110. In answer to the allegations of Paragraph 110 of the Complaint, Defendant denies the allegations set forth therein.

111. In answer to the allegations of Paragraph 111 of the Complaint, Defendant denies the allegations set forth therein.

112. In answer to the allegations of Paragraph 112 of the Complaint, Defendant denies the allegations set forth therein.

113. In answer to the allegations of Paragraph 113 of the Complaint, Defendant denies the allegations set forth therein and further specifically denies that Plaintiff is entitled to recovery of any damages whatsoever from Defendant.

### **AFFIRMATIVE DEFENSES TO ALL CLAIMS FOR RELIEF**

#### **FIRST AFFIRMATIVE DEFENSE**

1. As a separate and affirmative defense to Plaintiff's Complaint, Defendant alleges that the Complaint as a whole, and each purported claim for relief asserted therein, fails to state a claim upon which relief may be granted.

#### **SECOND AFFIRMATIVE DEFENSE**

2. As a separate and affirmative defense to Plaintiff's Complaint, Defendant alleges that the Complaint fails to state a claim for attorneys' fees pursuant to any statutory or contractual provision.

#### **THIRD AFFIRMATIVE DEFENSE**

3. As a separate and affirmative defense to Plaintiff's Complaint, and to every cause of action alleged therein, Defendant alleges that each cause of action is barred, in whole or in part, by the doctrine of unclean hands.

#### **FOURTH AFFIRMATIVE DEFENSE**

4. As a separate and affirmative defense to Plaintiff's Complaint, and to every cause of action alleged therein, Defendant alleges that, although Defendant denies that Plaintiff was



1 damaged in any way, if it should be determined that Plaintiff was damaged, then Defendant  
2 alleges that Plaintiff failed to mitigate his purported damages, and further alleges that, to the  
3 extent any damages could have been mitigated, such sums should be deducted from any award of  
4 damages.

5 **FIFTH AFFIRMATIVE DEFENSE**

6 5. As a separate and affirmative defense to Plaintiff's Complaint, and to every cause  
7 of action alleged therein, Defendant alleges that to the extent during the course of this litigation  
8 Defendant acquires any additional evidence of wrongdoing by Plaintiff, which wrongdoing would  
9 have materially affected the terms and conditions of Plaintiff's employment or would have  
10 resulted in Plaintiff either being demoted, disciplined, or terminated, such after acquired evidence  
11 shall bar Plaintiff's claims on liability or damages or shall reduce such claims as provided by law.

12 **SIXTH AFFIRMATIVE DEFENSE**

13 6. As a separate and affirmative defense to Plaintiff's Complaint, Defendant is  
14 informed and believes, and based thereon alleges, that Plaintiff's Complaint, or parts thereof, is  
15 barred by the applicable statutes of limitations.

16 **SEVENTH AFFIRMATIVE DEFENSE**

17 7. As a separate and affirmative defense to Plaintiff's Complaint, Defendant is  
18 informed and believes, and based thereon alleges, that any recovery by Plaintiff is barred on the  
19 ground that, as to each and every written, oral, implied or other contract alleged, there was a  
20 failure of consideration and/or lack of mutual consent.

21 **EIGHTH AFFIRMATIVE DEFENSE**

22 8. As a separate and affirmative defense to Plaintiff's Complaint, Defendant is  
23 informed and believes, and based thereon alleges, that to the extent Defendant did not perform its  
24 contractual obligations, then Defendant's performance was excused by virtue of Plaintiff's  
25 material breach, failure of performance, prevention of performance and/or other wrongs.

26 **NINTH AFFIRMATIVE DEFENSE**

27 9. As a separate and affirmative defense to Plaintiff's Complaint, Defendant is  
28 informed and believes, and based thereon alleges, that its conduct was a just and proper exercise

1 of managerial discretion, undertaken for fair and honest reasons, comporting with good faith  
2 under the circumstances then existing, and was privileged and justified.

3 **TENTH AFFIRMATIVE DEFENSE**

4 10. As a separate and affirmative defense to Plaintiff's Complaint, and to every cause  
5 of action alleged therein, Defendant alleges that, to the extent that Plaintiff seeks recovery on  
6 account of physical, mental and emotional pain and suffering, then his exclusive remedy for such  
7 damages is under the California Workers' Compensation Act.

8 **ELEVENTH AFFIRMATIVE DEFENSE**

9 11. As a separate and affirmative defense to Plaintiff's Complaint, and to every cause  
10 of action alleged therein, Defendant states that although Defendant denies that Plaintiff was  
11 damaged in any way, if it should be determined that Plaintiff was damaged, then Defendant  
12 alleges, based on information and belief, that the proximate cause of such damage was the  
13 conduct of Plaintiff or others for which Defendant was not and is not responsible.

14 **TWELFTH AFFIRMATIVE DEFENSE**

15 12. As a separate and affirmative defense to Plaintiff's Complaint, and to every cause  
16 of action alleged therein, Defendant alleges that Plaintiff's claims for tort damages and punitive  
17 damages are barred by the Due Process Clause (Fifth Amendment, Fourteenth Amendment,  
18 Section 1 and the Excessive Fines Clause (Eight Amendment) of the United States Constitution  
19 and the corresponding provisions of the California Constitution.

20 **THIRTEENTH AFFIRMATIVE DEFENSE**

21 13. As a separate and affirmative defense to each and every prayer for punitive  
22 damages in Plaintiff's Complaint, Defendant alleges that the allegations of each cause of action,  
23 whether considered singly or in any combination, fail to state facts sufficient to state a claim for  
24 which punitive damages may be granted.

25 **FOURTEENTH AFFIRMATIVE DEFENSE**

26 14. As a separate and affirmative defense to Plaintiff's Complaint, and to every cause  
27 of action alleged therein, Defendant alleges that, at all times relevant to the Complaint, Defendant  
28 had good faith defenses based in law and/or fact which, if successful, would preclude recovery by

1 Plaintiff based on the allegations of the Complaint.

2 **FIFTEENTH AFFIRMATIVE DEFENSE**

3 15. As a separate and affirmative defense to Plaintiff's Complaint, and to every cause  
4 of action alleged therein, Defendant alleges that each cause of action is barred, in whole or in  
5 part, by the doctrine of laches.

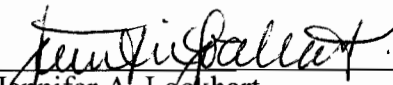
6 **PRAYER**

7 WHEREFORE, Defendant prays for judgment as follows:

- 8 1. That Plaintiff's Complaint be dismissed;  
9 2. That Plaintiff take nothing by reason thereof,  
10 3. That judgment be entered in favor of Defendant;  
11 4. That Defendant be awarded its attorneys' fees and costs of suit; and  
12 5. For such other and further relief as the Court deems just and proper.

13 Dated: June 16, 2008

MORGAN, LEWIS & BOCKIUS LLP

14  
15 By   
16 Jennifer A. Lockhart  
17 Attorneys for Defendant  
18 BOSTON SCIENTIFIC CORPORATION  
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